

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

ConocoPhillips Company

Docket Nos. ER03-428-004
ER06-62-000

ORDER ON UPDATED MARKET POWER ANALYSIS
AND TARIFF REVISIONS

(Issued December 20, 2005)

1. In this order, the Commission accepts an updated market power analysis filed by ConocoPhillips Company (ConocoPhillips), thus ensuring by its review of the conditions under which market-based rate authority is granted that the prices charged for jurisdictional sales are just and reasonable.¹ The Commission also accepts ConocoPhillips' tariff sheets incorporating, among other things, the Commission's change in status language as adopted in Order No. 652,² a provision prohibiting inter-affiliate sales "without first receiving" Commission authorization,³ a provision prohibiting the sale of Ancillary Services without first establishing an Internet-based OASIS-like site as provided for by Commission policy,⁴ deleting an existing Code of

¹ ConocoPhillips should have filed its updated market power analysis by August 30, 1998, which is three years from the date the Commission accepted its previous analysis. ConocoPhillips did not file its next analysis until May 20, 2005. ConocoPhillips' next updated market power analysis is due within three years of the date of this order, and we expect that filing to be made in a timely fashion.

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

³ *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 7-8, 12 (2002).

⁴ *See Avista Corporation*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

Conduct and other provisions that relate to an affiliate relationship that no longer exists,⁵ and removing a pro forma service agreement.⁶ ConocoPhillips' next updated market power analysis is due three years from the date of this order.

Background

2. On May 20, 2005, as amended on September 22, 2005, in Docket No. ER03-428-004, ConocoPhillips submitted an updated market power analysis to comply with the Commission's orders issued on April 14, 2004 and clarified on July 8, 2004.⁷ On October 21, 2005, in Docket No. ER06-62-000, ConocoPhillips submitted proposed revisions to its market-based rate tariff.

3. ConocoPhillips is a Delaware corporation with its principal place of business in Houston, Texas and operations primarily in the Southeastern and Western United States. ConocoPhillips states that it owns and controls 614 MW of generating capacity in the Entergy control area and 78 MW of generating capacity in the California Independent System Operation Corporation (CAISO) market.

4. ConocoPhillips requests waiver of the Commission's 60-days prior notice requirement to allow its proposed tariff revisions to become effective on October 24, 2005.

Procedural Matters

5. Notices of ConocoPhillips' filings on May 20, 2005, September 22, 2005, and October 21, 2005 were published in the *Federal Register*, 70 Fed. Reg. 61,796 (2005), and 70 Fed. Reg. 67,471(2005), with interventions, comments, and protests due on or before October 28, 2005 and November 14, 2005 respectively. None was filed.

⁵ ConocoPhillips and an affiliate of Pacific Gas & Electric Company (PG&E) were partners in the development of SRW Cogeneration Limited Partnership, the owner of a "qualifying facility" located in Orange, Texas. However, that affiliation ended in August 2002 upon ConocoPhillips' purchase of the equity interest held by PG&E's affiliate.

⁶ Sellers with market-based rate authority are not required to have pro forma service agreements on file with the Commission. *See Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043, FERC Stats. & Regs. ¶ 31,127 at 30,119, Table 2, *order on reh'g*, 100 FERC ¶ 161,074 (Order No. 2001-A) (2002).

⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

Discussion

Market-Based Rate Authorization

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁸ As discussed below, the Commission concludes that ConocoPhillips may continue to make market-based rate sales.

Generation Market Power

7. In *AEP Power Marketing, Inc.*,⁹ the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. ConocoPhillips submitted both indicative screens for the Entergy control area and for the CAISO market. ConocoPhillips asserts that it passes both of the indicative screens for the Entergy Control area and CAISO market.

8. The Commission has reviewed ConocoPhillips' generation market power screens for the Entergy control area and the CAISO market and has determined that ConocoPhillips passes both the pivotal supplier and wholesale market share screens in those markets. Accordingly, the Commission finds that ConocoPhillips satisfies the Commission's generation market power standard for continuing market-based rate sales.

Transmission Market Power

9. ConocoPhillips states that neither ConocoPhillips nor any of its affiliates own transmission assets, except for those that are considered part of a Qualifying Facility pursuant to 18 C.F.R. § 292.101(b)(1)(i) (2005). Based on these representations, the Commission finds that ConocoPhillips satisfies the Commission's transmission market power standard for continuing market-based rate sales.

⁸ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁹ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

Other Barriers to Entry

10. ConocoPhillips states that although it owns and is affiliated with entities that own certain existing and/or proposed natural gas transportation infrastructure, as well as infrastructure related to oil refining, the operation of such infrastructure is separate from ConocoPhillips' power marketing activities. Based on these representations, the Commission is satisfied that ConocoPhillips cannot erect barriers to entry. However, should ConocoPhillips or any of its subsidiaries or affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the ConocoPhillips' authority to sell power at market-based rates.¹⁰

Affiliate Abuse

11. ConocoPhillips states that it is not affiliated with any entity that has a franchised service territory or that provides service to captive customers. Based on these representations, we find that the ConocoPhillips satisfies the Commission's concerns with regard to affiliate abuse.

Waiver of Prior Notice Requirement

12. ConocoPhillips requests waiver of the Commission's 60-day prior notice requirement to permit its proposed revisions to its market-based rate tariffs to become effective on October 24, 2005, one day after filing. We will grant waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004) to allow an effective date of October 24, 2005.¹¹

Reporting Requirements

13. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

¹⁰ See *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 at 61,148 (1993).

¹¹ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, order on reh'g, 61 FERC ¶ 61,089 (1992).

greater) market-based power sales during the most recent calendar quarter.¹² Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹³ Accordingly, ConocoPhillips must file its first Electric Quarterly Reports no later than 30 days after the first quarter its tariffs are in effect.¹⁴

14. ConocoPhillips must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, ConocoPhillips has included the change in status reporting requirement in its tariffs.

15. ConocoPhillips is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

The Commission orders:

- (A) ConocoPhillips' updated market power analysis is accepted for filing.
- (B) ConocoPhillips' revised tariff sheets are accepted effective October 24, 2005.

¹² Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹³ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹⁴ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

(C) ConocoPhillips is directed to file an updated market analysis within three years of the date of this order and every three years thereafter.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.